

STATE OF WISCONSIN,

Plaintiff,

v.

Case No. 04 CV 1709

ABBOTT LABORATORIES, et al.,

Defendants.

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**DEFENDANT DEY, INC.'S RESPONSES AND OBJECTIONS TO  
PLAINTIFF STATE OF WISCONSIN'S SEVENTH SET OF REQUESTS  
FOR PRODUCTION OF DOCUMENTS TO ALL DEFENDANTS**

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Pursuant to Wisconsin Statutes §§ 804.01 and 804.09, Defendant Dey, Inc. ("Dey"), by its undersigned counsel, asserts the following responses and objections to Plaintiff State of Wisconsin's Seventh Set of Requests for Production of Documents To All Defendants (the "Request"), dated February 4, 2008, and propounded by Plaintiff State of Wisconsin ("Plaintiff," the "State," or "Wisconsin"), as follows:

**GENERAL OBJECTIONS AND RESERVATION OF RIGHTS**

1. Dey objects to the Request to the extent it seeks to impose duties and obligations on Dey greater than Dey's duties and obligations under the Wisconsin Rules of Civil Procedure and any applicable local rules. Dey will comply with its duties and obligations under the Wisconsin Rules of Civil Procedure and any applicable local rules.

2. Dey provides its responses subject to the Protective Order, entered on November 29, 2005, in this action.

3. Dey objects to the Request to the extent it is vague, ambiguous, unduly burdensome, overbroad, oppressive, duplicative, or not limited to the discovery of information, which is relevant to the subject matter of this litigation or reasonably calculated to lead to the discovery of admissible evidence.

4. Dey objects to the Request to the extent that the Request seeks documents not limited to sales in the State of Wisconsin on the grounds that such Request is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

5. Dey objects to the Request as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent it seeks documents concerning pharmaceutical products not at issue in this litigation. Dey will provide documents relating only to pharmaceutical products identified in the Second Amended Complaint.

6. Dey objects to the Request to the extent it demands the production of documents that are privileged or otherwise protected against discovery pursuant to the attorney-client privilege, the work product doctrine, the joint defense privilege, the consulting expert rule, the common interest doctrine, investigative privileges, or any other legally recognized privilege, immunity, or exemption from discovery. To the extent any such protected documents are inadvertently produced in response to the Request, the

production of such documents shall not constitute a waiver of Dey's right to assert the applicability of any privilege or immunity to the documents, and any documents shall be returned to Dey's counsel immediately upon discovery thereof.

7. Dey objects to the Request to the extent that it demands the production of documents containing trade secrets, or proprietary, commercially sensitive or other confidential information.

8. Dey objects to the disclosure, under any circumstance, of trade secret information where the probative value in this litigation is greatly exceeded by the potential harm to Dey if the information were to fall into the hands of its competitors, and further asserts each and every applicable privilege and rule governing confidentiality to the fullest extent provided by the law.

9. Dey objects to the Request to the extent that it demands the production of documents that are: (a) not within the possession, custody, or control of Dey, their agents, or their employees, (b) publicly available; or (c) more appropriately sought from third parties or other defendants to whom requests have been or may be directed.

10. These responses and objections are made without waiving or intending to waive, but to the contrary intending to preserve and preserving: (a) any objections as to the competency, relevancy, materiality, privilege, or admissibility as evidence, for any purpose, of any documents produced in response to the Request; (b) the right to object on any ground to the use of documents produced in response to the Request at any hearing, trial or other point during this action; (c) the right to object on any ground at any time to a

demand for further responses to the Request; or (d) the right at any time to revise, correct, add to, supplement, or clarify any of the responses or objections contained herein.

11. The documents supplied herein are for use in this action and for no other purpose.

12. No response or objection made herein, or lack thereof, is an admission by Dey as to the existence or non-existence of any documents.

13. Dey objects to the Request to the extent that it demands the production of documents from outside of the statute of limitations applicable to the State's claims in this action, or beyond the time period relevant to this action. Dey objects to the Request as irrelevant, overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it purports to require production of documents or seek information relating to a period of time after the filing of the Complaint on or around June 3, 2004.

14. Dey objects to the Request to the extent that it demands the production of proprietary documents of third parties.

15. Dey objects to any implications and to any explicit or implicit characterization of facts, events, circumstances, or issues in the Request. Any response by Dey that it will produce documents in connection with the Request, or that it has no responsive documents, is not intended to indicate that Dey agrees with any implication or any explicit or implicit characterization of facts, events, circumstances, or issues in the Request, or that such implications or characterizations are relevant to this action.

16. Dey objects to the Request as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent it seeks documents concerning any discontinued product dated after the date of such product's discontinuation.

17. Dey objects to the Request to the extent it seeks information or documents relating to Dey's activities that are outside the scope of the allegations in the Second Amended Complaint.

18. Dey objects to the Request to the extent it demands production of documents relating to Dey's activities other than those which concern the State, on the grounds that such documents are neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence.

19. Dey objects to the Request to the extent it purports to impose on Dey an obligation to search or produce email or other electronically stored data in any format on the grounds that such Request is overly broad, unduly burdensome, harassing, and not reasonably limited in scope.

20. Dey reserves the right to assert additional objections to this Request as appropriate and to amend or supplement these objections and responses in accordance with the applicable rules and court orders and based on results of its continuing investigation.

## OBJECTIONS TO DEFINITIONS AND INSTRUCTIONS

The General Objections and Reservations of Rights stated above apply to and are incorporated into Dey's objections to the definitions and instructions. Dey also objects to the definitions and instructions as follows:

1. Dey objects to Plaintiff's definition of "you," "your," and "your company" on the grounds that it is overly broad and unduly burdensome. Dey further objects to these definitions to the extent they include entities and persons that are not parties to this action.

2. Dey objects to Plaintiff's definition of "document" and "documents" on the grounds that it is vague, ambiguous, and overly broad. Dey further objects to this definition to the extent it includes documents that are protected by the attorney-client privilege, the work product doctrine, or any other applicable doctrine or privilege. Dey further objects to this definition to the extent it seeks to impose obligations on Dey that are greater than, or inconsistent with, Dey's obligations under the Wisconsin Rules of Civil Procedure and any applicable local rules. Dey further objects to this definition to the extent that it purports to require Dey to identify or produce documents or data in a particular form or format, to convert documents or data into a particular file format, to produce documents or data on any particular media, to search for and/or produce or identify documents or data on back-up tapes, to produce any proprietary software, data, programs or databases, to violate any licensing agreement or copyright laws, or to produce data, fields, records, or reports about produced documents or data. The

production of any documents or data or the provision of other information by Dey as an accommodation to Plaintiff shall not be deemed to constitute a waiver of this objection.

3. Dey objects to the Instruction paragraphs (the "Instructions") on the grounds that the Instructions are vague, ambiguous, and overly broad. Dey further objects to the Instructions as unduly burdensome to the extent they seek to impose on Dey obligations inconsistent with, or greater than, Dey's obligations under the Wisconsin Rules of Civil Procedure and any applicable local rules.

### **SPECIFIC RESPONSES AND OBJECTIONS TO DOCUMENT REQUEST**

The General Objections and Reservations of Rights and the Objections to Definitions and Instructions stated above apply to and are incorporated into the individual response to the Request set forth below, whether or not expressly incorporated by reference in the individual response. Dey also responds and objects specifically to the Request as follows:

#### **DOCUMENT REQUEST NO. 22**

All documents relating to your purchase, license, or receipt, of pricing information, including but not limited to average wholesale prices ("AWPs") or wholesale acquisition costs ("WACs") from First DataBank, Red Book, or Medispan for your drugs or the drugs of your competitors, including but not limited to contracts or license agreements. This request includes, but is not limited to, your purchase, license, or receipt of First DataBank's National Drug Data File ("NDDF"). In addition, this request includes, but is not limited to, contracts or license agreements between you and First DataBank, Red Book, or Medispan, as well as contracts or license agreements between you and any other party that provides pricing information from First DataBank, Red Book, or Medispan (for example, agreements between you and DMD American in connection with its "Analysource" product).

**DEY'S RESPONSE AND OBJECTIONS**

Dey objects to this Request on the grounds that it is vague, ambiguous, overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Dey further objects to this Request on the grounds that it contains terms that are themselves vague, ambiguous, or undefined, including: "pricing information, " "any other party that provides," "average wholesale prices ('AWPs')," and "wholesale acquisition costs ('WACs')." Dey objects to this Request to the extent it seeks documents unrelated to the Wisconsin Medicaid program, Medicare program, and/or outside the scope of the allegations in the Second Amended Complaint.

Subject to and without waiving the foregoing general and specific objections, Dey is not aware of any agreements responsive to this Request, but agrees to undertake a reasonable search for non-privileged documents potentially responsive to this Request.

Dated this 5<sup>th</sup> day of March, 2008.

BELL, GIERHART & MOORE, S.C.

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